

ESTTA Tracking number: **ESTTA630868**

Filing date: **10/03/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204897
Party	Defendant Laguna Lakes Community Association, Inc.
Correspondence Address	DONNA M FLAMMANG BRENNAN MANNA & DIAMOND PL 3301 BONITA BEACH RD STE 100 BONITA SPRINGS, FL 34134-7833 UNITED STATES dmflammang@bmdpl.com, crothschild@bmdllc.com, wsharders@bmdllc.com
Submission	Other Motions/Papers
Filer's Name	Chad R. Rothschild
Filer's e-mail	crothschild@bmdllc.com
Signature	/s/ Chad R. Rothschild
Date	10/03/2014
Attachments	Request for Phone Conference.pdf(19693 bytes ) Exhibit A.pdf(184181 bytes ) Exhibit B.pdf(96728 bytes ) Exhibit C.pdf(105807 bytes ) Exhibit D.pdf(165877 bytes ) Exhibit E.pdf(173870 bytes ) Exhibit F.pdf(106018 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>John Gerard Marino,</b>	)	
	)	<b>Consolidated Opp. No. 91/204,897</b>
<b>Opposer,</b>	)	<b>91/204,941</b>
	)	
v.	)	<b><u>REQUEST FOR PHONE</u></b>
	)	<b><u>CONFERENCE WITH</u></b>
<b>Laguna Lakes Community Association,</b>	)	<b><u>INTERLOCUTORY ATTORNEY</u></b>
<b>Inc.,</b>	)	
	)	
<b>Applicant.</b>	)	

Applicant respectfully requests a conference with Opposer and the Interlocutory Attorney to discuss matters pertaining to the scheduling of various trial depositions in the subject matter. On September 29, 2014, the Board granted Opposer an extension of his testimony period, recommending on October 3, 2014 and closing October 10, 2014. On September 30, 2014, counsel for Applicant and counsel for Opposer agreed to hold trial depositions on October 6 and October 10 given that Applicant's lead counsel is unavailable October 8 and October 9 due to an oral argument before the Federal Circuit Court of Appeals scheduled before September 29. *See* Exhibit A (9/29 – 9/30 e-mail chain).

On October 2, Opposer's counsel changed course, and noticed the deposition of John Gerard Marino for October 8 (one of the dates he knew lead counsel was explicitly unavailable and despite having previously agreed to conduct his trial depositions on October 6 and October 10). *See* Exhibit B (e-mail from Opposer's counsel) and Exhibit C (Notice of John Gerard Marino deposition). At this point, counsel for Applicant suggested a phone conference with the Interlocutory Attorney to resolve this scheduling dispute and other issues. *See* Exhibit D (e-mail from Applicant's counsel).

On October 3, Opposer's counsel noticed **five** trial depositions for October 9. *See* Exhibit F. Three of the persons noticed (Kelly, Cowart, and Flammang) are non-party, former board members that must be compelled to appear by subpoena (and Applicant does not interpret the Board's recent 9/29 order as permitting the trial depositions of *former* board members). In addition, the Board has previously ruled that the deposition of Attorney Flammang, one of Applicant's attorneys, would be inappropriate. *See* 32 TTABVUE; 47 TTABVUE (not granting Opposer opportunity to depose Attorney Flammang despite request from Opposer in 42 TTABVUE); *see also* 49 TTABVUE (denying Opposer's request that Applicant produce another 30(b)(6) witness). Opposer insisted on taking the depositions of Kelly, Cowart, and Flammang despite objections from Applicant's counsel. *See* Exhibit E.

WHEREFORE, Applicant requests a phone conference with Opposer and the Interlocutory Attorney around 2:30 pm on October 3, 2014.

Respectfully submitted,

/s/ Chad R. Rothschild

W. Scott Harders (Ohio Bar No. 0070598)  
Donna M. Flammang (Florida Bar No. 0015230)  
Chad R. Rothschild (Ohio Bar No. 0088122)

**Brennan, Manna & Diamond, LLC**

75 East Market Street

Akron, Ohio 44308

Phone: 330-253-3715

Fax: 330-253-3745

wsharders@bmdllc.com

dmflammang@bmdpl.com

crothschild@bmdllc.com

*Attorneys for Applicant*

Dated: October 3, 2014

## CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2014 a copy of the foregoing *Request for Phone Conference with Interlocutory Attorney* was served by e-mail upon:

Scott Behren, Esq.  
Behren Law Firm  
2893 Executive Park Drive Suite 203  
Weston, FL 33331  
**scott@behrenlaw.com; scott.behren@gmail.com**

/s/ Chad R. Rothschild  
One of the Attorneys for Applicant

## Chad Rothschild

---

**From:** Scott behren <[scott.behren@gmail.com](mailto:scott.behren@gmail.com)>  
**Sent:** Tuesday, September 30, 2014 1:19 PM  
**To:** W. Scott Harders  
**Cc:** Chad Rothschild; [scott@behrenlaw.com](mailto:scott@behrenlaw.com); Donna Flammang; Gerard Marino CCIM  
**Subject:** Re: Marino v. Laguna Lakes

OK I will set requested depositions /trial testimony for 10/6 and 10/10.

Scott Behren

On Tue, Sep 30, 2014 at 1:17 PM, W. Scott Harders <[wsharders@bmdllc.com](mailto:wsharders@bmdllc.com)> wrote:

Mr. Behren –

As to counsel, Ms. Flammang, the Board has already rejected your attempt to depose her.

And you were able to depose all the board members in one partial day during the discovery phase. Even with my travel schedule, you have 3 days - 10/3, 10/6 and 10/10. Additionally, the Board has permitted your use of the discovery depositions of current members and the 30b6 deponents, so there really does not appear to be a need for additional depositions.

Can I expect your supplemental pretrial disclosures today?

Scott

**From:** Scott behren [mailto:[scott.behren@gmail.com](mailto:scott.behren@gmail.com)]  
**Sent:** Tuesday, September 30, 2014 11:21 AM  
**To:** W. Scott Harders  
**Cc:** Chad Rothschild; [scott@behrenlaw.com](mailto:scott@behrenlaw.com); Donna Flammang; Gerard Marino CCIM

**Subject:** Re: Marino v. Laguna Lakes

Sorry. You might have to have someone else cover them. You have other attorneys in your own office and in your Florida office. I have limited time in which to operate pursuant to TTAB Orders. We will depose each of the persons previously deposed and Donna Flammang, Esq. Please advise ASAP, i expect to send out notices today.

Scott Behren

On Tue, Sep 30, 2014 at 11:18 AM, W. Scott Harders <[wsharders@bmdllc.com](mailto:wsharders@bmdllc.com)> wrote:

Mr. Behren –

We are checking schedules today. I can say that I am unavailable on 10/7 - 10/9 as I have oral arguments at the CAFC on the 8<sup>th</sup> and will be travelling the day prior and after.

Also, can you specify which "former board members" you seek to depose and rough timing – i.e. half day, whole day? In this vein and per the Board's order, we'll anticipate receiving your supplemented pretrial disclosures as soon as possible so we can plan.

Scott Harders

**From:** Scott behren [mailto:[scott.behren@gmail.com](mailto:scott.behren@gmail.com)]

**Sent:** Monday, September 29, 2014 9:47 PM

**To:** Chad Rothschild

**Cc:** [scott@behrenlaw.com](mailto:scott@behrenlaw.com); W. Scott Harders; Donna Flammang; Gerard Marino CCIM

**Subject:** Re: Marino v. Laguna Lakes

Gentlemen:

I am going to need to clear two days for the trial testimony depositions of my client and the LLCA former board members. I would propose 10/3, 10/8, 10/9 and 10/10. If I don't hear back from you by noon tomorrow EST, I will unilaterally scheduled them. Thanks for your prompt attention to this matter.

Scott Behren

On Wed, Jul 2, 2014 at 4:39 PM, Chad Rothschild <[crothschild@bmdllc.com](mailto:crothschild@bmdllc.com)> wrote:

Scott,

The attached reply was filed today with the TTAB.

Thanks,

Chad

Chad Rothschild

Attorney | Brennan, Manna & Diamond, LLC

75 East Market St. | Akron, OH 44308

Direct Phone [330-253-4766](tel:330-253-4766) | Direct Fax [330-253-4788](tel:330-253-4788)

[crothschild@bmdllc.com](mailto:crothschild@bmdllc.com) | [www.bmdllc.com](http://www.bmdllc.com)

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--

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Fax [\(772\) 252-3365](tel:(772)252-3365)

[scott@behrenlaw.com](mailto:scott@behrenlaw.com)

[www.behrenlaw.com](http://www.behrenlaw.com)

[www.takethisjobnshoveitblog.com](http://www.takethisjobnshoveitblog.com) (employee rights blog)

Twitter: Flaemploylaw

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[scott@behrenlaw.com](mailto:scott@behrenlaw.com)

[www.behrenlaw.com](http://www.behrenlaw.com)

[www.takethisjobnshoveitblog.com](http://www.takethisjobnshoveitblog.com) (employee rights blog)

Twitter: Flaemploylaw

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[www.behrenlaw.com](http://www.behrenlaw.com)  
[www.takethisjobnshoveitblog.com](http://www.takethisjobnshoveitblog.com) (employee rights blog)  
Twitter: Flaemploylaw

## Chad Rothschild

---

**From:** Scott behren <scott.behren@gmail.com>  
**Sent:** Thursday, October 02, 2014 2:12 PM  
**To:** W. Scott Harders  
**Cc:** Scott Behren; Chad Rothschild; Gerard Marino CCIM; Donna Flammang  
**Subject:** Marino Case

First I am setting the testimony deposition of Gerard Marino. I actually have conflicts on 10/6 and 10/10 that I would not be able to do depositions on those days. Therefore, I am going to set Mr. Marino for October 8 but can also set him on October 9 If you prefer. Let me know.

Please confirm that you also agree under the TTAB's most recent Order that prior depositions of Jeff Kelly, Mary Ann Cowart, Patrick Tardiff and Robert Hajicek can be used in their entirety so there will not be need for the depositions of those persons.

I am conferring with my client and may also be scheduling the depositions of Neil Esner, Art Falcone and Donna Flammang. Will get back to you shortly on same.

As far my pre-trial disclosures, I am only required to update them, if necessary, and I don't think it is necessary, but feel free to let me know if you disagree with my position on this.

--

Scott M. Behren, Esq.  
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[www.takethisjobnshoveitblog.com](http://www.takethisjobnshoveitblog.com) (employee rights blog)  
Twitter: Flaemploylaw

UNITED STATES PATENT AND TRADEMARK  
OFFICE-Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposition No: 91204897  
Opposition No: 91204941

JOHN G. MARINO

vs.

LAGUNA LAKES COMMUNITY  
ASSOCIATION, INC.

\_\_\_\_\_/

**NOTICE OF TESTIMONY DEPOSITION**

PLEASE TAKE NOTICE that the undersigned will take the deposition of:

<b><u>Name</u></b>	<b><u>Date</u></b>	<b><u>Time</u></b>
John Gerard Marino	October 8, 2014	11:00 am

upon oral examination before an officer qualified to administer oaths at the offices of Von Ahn Associates Court Reporting, 13241 University Drive, Suite 104, Ft. Myers, FL 33907 for the above-styled cause. The deposition shall be conducted pursuant to local rules and shall continue day to day, weekends and holidays excepted, until completed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed this 2 day of October 2014 to: Chad Rothschild, Esq. and Donna Flammig, Esq., Brennan, Manna & Diamond, LLC, 75 East Market St. | Akron, OH 44308.

Behren Law Firm  
2893 Executive Park Drive, Suite 110  
Weston, FL 33331  
(954) 636-3802  
(772) 252-3365 - fax  
scott@behrenlaw.com

By: / Scott M. Behren/  
Scott M. Behren  
Fla. Bar No. 987786

## Chad Rothschild

---

**From:** W. Scott Harders  
**Sent:** Thursday, October 02, 2014 4:49 PM  
**To:** Scott behren  
**Cc:** Scott Behren; Chad Rothschild; Donna Flammang  
**Subject:** RE: Marino Case

I cannot make 10/8 as you know due to scheduled oral arguments before the Court of Appeals for the Federal Circuit in Washington DC on that day. You also know I will be return travelling on the 9<sup>th</sup>. I may be able to attend telephonically starting in the afternoon if that is enough time. Otherwise, kindly revert to one of 10/6 or 10/10 which worked for you two days ago.

I also disagree with your contention that you can use the non-party, discovery depositions of Kelly and Cowart as testimony under the board's order. Finally, I object to any attempt to try to enlarge the testimony, witnesses or evidence from your pretrial disclosures and discovery phase which is now closed.

If we cannot agree to these points, I suggest we attempt a phone conference with the interlocutory attorney tomorrow.  
Scott

W. Scott Harders  
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## Chad Rothschild

---

**From:** Scott behren <scott.behren@gmail.com>  
**Sent:** Thursday, October 02, 2014 5:00 PM  
**To:** W. Scott Harders  
**Cc:** Scott Behren; Chad Rothschild; Donna Flammang; Gerard Marino CCIM  
**Subject:** Re: Marino Case

Sorry Scott, given the time parameters and your request to take live testimony I don't have dates to work with you on this, especially since you have had at least 3 other lawyers working on this case also.

So you don't agree to use the testimony of Cowart and Kelly even though they were officers of the LLCA, correct? Then that means I will have to set their testimony and Ms. Flammang on 10/9. Will get Notices out to you on them tomorrow.

If you wish to try to reach me on my cell tomorrow feel free 954 295 7501.

Scott Behren

On Thu, Oct 2, 2014 at 4:49 PM, W. Scott Harders <[wsharders@bmdllc.com](mailto:wsharders@bmdllc.com)> wrote:

I cannot make 10/8 as you know due to scheduled oral arguments before the Court of Appeals for the Federal Circuit in Washington DC on that day. You also know I will be return travelling on the 9<sup>th</sup>. I may be able to attend telephonically starting in the afternoon if that is enough time. Otherwise, kindly revert to one of 10/6 or 10/10 which worked for you two days ago.

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If we cannot agree to these points, I suggest we attempt a phone conference with the interlocutory attorney tomorrow.

Scott

W. Scott Harders

Brennan, Manna & Diamond, LLC

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Twitter: Flaemploylaw

UNITED STATES PATENT AND TRADEMARK  
OFFICE-Trademark Trial and Appeal Board  
P.O. Box 1451  
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Opposition No: 91204897  
Opposition No: 91204941

JOHN G. MARINO

vs.

LAGUNA LAKES COMMUNITY  
ASSOCIATION, INC.

\_\_\_\_\_ /

**NOTICE OF TESTIMONY DEPOSITIONS**

PLEASE TAKE NOTICE that the undersigned will take the deposition of:

<b><u>Name</u></b>	<b><u>Date</u></b>	<b><u>Time</u></b>
Jeffrey A. Kelly	October 9, 2014	10:00 am
Donna M. Flammang		11:00 am
Mary Ann Cowart		2:00 pm
Patrick Tardiff		3:00 pm
Robert Hajicek		4:00 pm

upon oral examination before an officer qualified to administer oaths at the offices of Von Ahn Associates Court Reporting, 13241 University Drive, Suite 104, Ft. Myers, FL 33907 for the above-styled cause. The deposition shall be conducted pursuant to local rules and shall continue day to day, weekends and holidays excepted, until completed.



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I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed this 3 day of October 2014 to: Chad Rothschild, Esq. and Donna Flamming, Esq., Brennan, Manna & Diamond, LLC, 75 East Market St. | Akron, OH 44308.

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By: / Scott M. Behren/  
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Fla. Bar No. 987786